

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Brian C. Barnes
Rodney Schmidt
Geoffrey Strongin

Serial No.: 10/005,248

Filed: December 3, 2001

For: Method And Apparatus For Restricted
Execution Of Security Sensitive Instructions

Confirmation No.: 7937

Group Art Unit: 2132

Examiner: Lemma, Samson B.

Atty. Dkt. No.: 2000.056500/TT4085

Customer No.: 23720

REQUEST FOR RECONSIDERATION OF BOARD'S DECISION

MAIL STOP PATENTS – APPEAL BRIEF

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Request is submitted in response to the Board's decision dated November 6, 2009, for which the two-month date to respond is January 6, 2010. This paper is being filed on or before the due date, therefore, it is timely filed.

It is believed that no fee is due for the filing of this Request. However, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed material, the Commissioner is authorized to deduct said fees from Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/2000.056500.

Appellants respectfully request that the Board reconsider the previous affirmation of the Examiner's argument based on at least the following reasons, grant this Request for Rehearing and vacate the previous ruling.

REMARKS

In the Decision, the Board reversed the rejections of claims 1-3, 7-11, 15-19 and 23-24 under U.S.C. § 102(b) as being anticipated by *Draves* and claims 4-6, 12-14 and 20-22 under U.S.C. § 103(a) over *Draves* in view of *Krueger*. Applicants acknowledge and appreciate the Board's reversal of the Examiner's rejections.

In the Decision, the Board affirmed the rejections of claims 1-3, 7-11, 15-19 and 23-24 under U.S.C. § 102(b) as being anticipated by *Kamiya* and claims 4-6, 12-14 and 20-22 under U.S.C. § 103(a) over *Kamiya* in view of *Krueger*. The Board affirmed all rejections as set forth in the final rejection of this application by the Examiner. It is believed that some of the reasons that those rejections are improper are expressly set forth in the Appeal Brief filed in this matter.

The Board's Decision asserts that *Kamiya* discloses all the limitations of the claimed invention in independent claim 1.

Although the Board issued a well-stated decision, Appellants respectfully request that the Board revisit its decision. The Board has stated in its Findings of Fact that execution of a branch instruction corresponds to the claimed feature of "requesting to execute at least one of the plurality of instructions or set of instructions by a software code running on the processor," as called for in claim 1. *See* Decision, pp. 7-8 (citing *Kamiya*, col. 5, ll.23-25). The Board also found that executing the succeeding microinstructions if memory protection information is true corresponds to the claimed feature of "executing the requested instruction or set of instructions providing that the second security ID matches the first security ID," as recited in claim 1. *See id.* at p.8. Appellants respectfully submit that the Examiner has misapplied the *Kamiya* reference to the claims.

For example, the Examiner found (and the Board adopted the finding) that the branch instructions described in *Kamiya* correspond to the requested instruction of claim 1, but then the Examiner argued that executing the succeeding microinstruction (NOT the branch instruction) corresponds to executing the requested instruction, as recited in claim 1. *See id.* at pp. 7-8. Such an application of *Kamiya* is inconsistent, and therefore, the Examiner's application of *Kamiya* is improper. Appellants respectfully request that the Board reconsider this inconsistency in the Examiner's application of *Kamiya* to reject the pending claims. Claim 1 calls for requesting to execute the instruction and executing the requested instruction. In other words, the instruction called for in claim 1 is the same throughout claim 1 by virtue of its antecedent basis. The instruction in the "requesting" claim element is the same as the instruction in the "executing" claim element. The Examiner has argued that *two different instructions* described in *Kamiya* correspond to the instruction recited in claim 1 (*i.e.*, the Examiner asserts that branch instruction AND the succeeding microinstruction both correspond to the instruction of claim 1). For at least this reason, the Examiner was in error, and the Board's interpretation of the term "instruction[s]" with regard to the 35 U.S.C. §102 rejections of claims 1-3, 7-11, 15-19 and 23-24 as being anticipated by *Kamiya* should be reconsidered. For similar reasons, Appellants respectfully submit the Board's decision with respect to claims 4-6, 12-14 and 20-22 under U.S.C. § 103(a) over *Kamiya* in view of *Krueger* should also be reconsidered.

In view of the foregoing, it is respectfully submitted that the Examiner erred in rejecting the claims pending in the present application. Accordingly, Appellants respectfully request that the Board reconsider and vacate its previous decision, reverse the Examiner's rejections, and issue instructions that all pending claims be allowed.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.
CUSTOMER NO. 23720

Date: December 28, 2009

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